

REMARKS

Claims 1-6 and 10-19 remain in the application with Claim 1 being independent. By the present amendment claim 1 has been amended. Support for the amendment can be found throughout the specification.

The Examiner rejected Claims 1-6, and 10-19, under 35 U.S.C. § 102(b) as being anticipated by *Yamamoto, et al.* The Examiner stated, "For the purposes of this rejection, the limitation, a positive amount, which is not defined in the specification, is considered to mean 'a non-negative amount' which is met by a value of 0". The Examiner admits that *Yamamoto; et al* is silent with regard to the bromine content of the phosgene employed and, therefore, states, "so no bromine is considered to be present".

The Examiner further rejected Claims 1-6, and 10-19, under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner specifically pointed to the recitation in Claims 1 and 2 of the limitation "a positive amount". The Examiner said this phrase is subject to one of two interpretations, "a non-negative amount" or "a non-zero amount". The Examiner felt it was impossible to determine the intended scope of the Applicants' claims because the limitation "a positive amount" was not defined in the specification.

Finally, the Examiner objected to the specification as failing to provide proper antecedent basis for the limitation "a positive amount" and, therefore, stated that the terminology must be removed from the claims.

Rejection of a claim under 35 U.S.C. § 102(b) as anticipated by a reference requires that the single reference teach each and every element of the rejected claim. If there are any differences whatsoever between the rejected claim and the reference, the rejection cannot be sustained. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985).

Independent Claim 1 has been amended to positively recite the step of preparing a phosgene having a bromine or iodine content of less than 50 ppm. Support for this amendment is found throughout the specification. The Examiner is directed specifically to Page 5, Line 14 through Page 9, Line 15.

As described in the present specification, phosgene prepared by typical processes contains levels of bromine or iodine which are much higher than the level recited in the claims of the present specification. This is due to the process by which phosgene is typically prepared starting from chlorine. This is described on Page 6, Lines 18-27 of the present specification. As explained in the specification, a common problem with preparation of isocyanates from phosgene is the discoloration of the isocyanate itself and subsequent discoloration of a foam prepared from the isocyanate. This problem has been present since the early days of preparing isocyanates using phosgene. As outlined in the specification, numerous attempts have been made to produce light colored isocyanates and correspondingly light colored foams. To date, none of these methods have been particularly satisfactory.

The Examiner is directed to the specification of *Yamamoto, et al.* wherein it is clear that the phosgene described and utilized in *Yamamoto, et al* produces a dark colored isocyanate, which produces dark colored foams. The Examiner is specifically directed to Example 1 and Control 1 of *Yamamoto, et al* described in Columns 4 and 5 wherein *Yamamoto, et al* clearly describes that the control isocyanates produced utilizing the phosgene preparation has a dark color. It is only following the specific procedure described in *Yamamoto, et al* of post-reaction treatment of the isocyanate by degassing it at a temperature of 170 °C, atmospheric pressure and passing hydrogen chloride gas through the mixture at a rate of 300 mills per minute for a period

of two hours that one is capable of cleaning the previously prepared isocyanate such that it has a lighter color. In addition, the Examiner is directed to Table 2 wherein *Yamamoto, et al* describes that the foam produced utilizing the two different isocyanates vary dramatically in the color of the foam. Specifically, after the special post-reaction treatment of *Yamamoto, et al* the foam produced has a pale yellow color versus a brown. Given the statements within *Yamamoto, et al* itself it is clear that the Examiner cannot maintain the position that the fact that *Yamamoto, et al* is silent with regard to the bromine content of the phosgene must mean that no bromine is present. Clearly, based on Applicants' actual invention if the phosgene of *Yamamoto, et al* had no bromine present, then the control sample of *Yamamoto, et al* would have not only been clear but the foam produced therefrom would also have been clear or pale yellow.

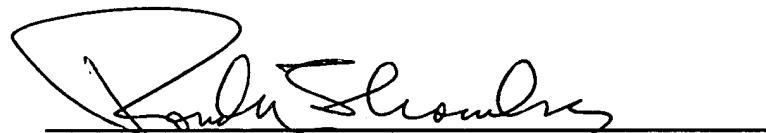
Because independent Claim 1 includes the limitations not found in *Yamamoto, et al* the rejection of this claim, and the claims which depend therefrom, under 35 U.S.C. § 102(b) based on *Yamamoto, et al* is improper and must be withdrawn. The present claims require a positive step of preparing a phosgene having a content of bromine or iodine or a mixture thereof of the molecular or bound form of less than 50 ppm, which is not disclosed anywhere within *Yamamoto, et al*.

Attorney docket # IN-12101

Applicants' attorney respectfully submits that the claims as amended are now in condition for allowance and respectfully requests such allowance.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS



April 25, 2003
Date

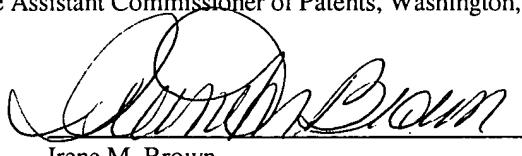
Randall L. Shoemaker, Registration No. 43,118
Howard and Howard Attorneys, P.C.
The Pinehurst Office Center, Suite 101
39400 Woodward Ave.
Bloomfield Hills, MI 48304-5151
(248) 723-0425



Attorney docket # IN-12101

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Irene M. Brown

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